

Notice of Allowability

Application No.

10/604,193

Examiner

James A. Menefee

Applicant(s)

KILLINGER, DENNIS K.

Art Unit

2828

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 2/6/2006.
2. ☒ The allowed claim(s) is/are 1-5.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

DETAILED ACTION

By amendment filed 2/6/2006, claims 1 and 3 are amended and claims 6-13 cancelled.

The corrected drawing sheet showing Figure 2 is received and is acceptable.

Allowable Subject Matter

Claims 1-5 are allowed. The following is an examiner's statement of reasons for allowance:

Regarding claim 1, there is not taught or disclosed in the prior art a method of tuning a laser where a gas cell containing gas with individual vibration-rotation line spectra is positioned within the laser cavity and the laser operates at an absorption minimum between adjacent absorption lines to lock the laser to a wavelength defined by the gas.

Regarding claim 3, there is not taught or disclosed in the prior art a method of tuning a laser that does not require fine tuning where a gas cell containing gas with individual vibration-rotation line spectra is positioned outside the laser cavity, where the laser operates at an absorption minimum between adjacent absorption lines to lock the laser to a wavelength defined by the gas.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

Applicant's arguments filed 2/6/2006 ("Remarks") have been fully considered and are persuasive.

Regarding the prior rejection of claim 1, applicant's arguments are persuasive. *See* Remarks at 6-7. The examiner agrees with applicant that Fig. 7 of Kleinschmidt, the only disclosure that could conceivably show the claimed gas cell within the cavity, cannot be said to disclose "operating said laser at an absorption minimum . . ." Remarks at 7. Only inert gas is apparently used in the cell during operation. Calibration done prior to laser operation is not the same as operating the laser at the absorption minimum to lock the wavelength, as required by the claims.

Regarding claim 3, applicant's arguments are persuasive because Kleinschmidt does require fine tuning. *See* Remarks at 8. While this is a preamble limitation, applicant uses the limitation to distinguish Kleinschmidt, therefore the limitation is given weight in determining patentability. *See Catalina Mktg. Int'l v. Coolsavings.com, Inc.*, 289 F.3d 801, 808-09, 62 USPQ2d 1781, 1785 (Fed. Cir. 2002) ("[C]lear reliance on the preamble during prosecution to distinguish the claimed invention from the prior art transforms the preamble into a claim limitation because such reliance indicates use of the preamble to define, in part, the claimed invention.").

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Menefee whose telephone number is (571) 272-1944. The examiner can normally be reached on M-F 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MinSun Harvey can be reached on (571) 272-1835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James Menefee
March 28, 2006